

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

MSC VENTURE CORP. SDN BHD and
MSC VENTURE ONE SDN BHD,

Plaintiffs,

v.

ESMOND GOEI and EVELYN GOEI,

Defendants.

ESMOND GOEI,

Third Party Plaintiff,

vs.

CYPHERMETRIX, INC., a Delaware
Corporation; CYPHEREDGE
TECHNOLOGIES, INC., a Delaware
Corporation; and JAMES B. LINKOUS,

Third-Party Defendants.

Case No. CV6-1731 RSM

FOURTH AMENDED COMPLAINT

With leave of Court pursuant to Federal Rule of Civil Procedure 15(a)(2), Plaintiffs MSC VENTURE CORPORATION SDN BHD and MSC VENTURE ONE SDN BHD, by their attorneys Schwabe Williamson & Wyatt and Hofheimer Gartlir & Gross, LLP file the following Fourth Amended Complaint and allege as follows:

FOURTH AMENDED COMPLAINT- 1

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JURISDICTION AND VENUE

1
2 1. Plaintiff MSC Venture Corporation Sdn Bhd ("MSCVC") is a Malaysian
3 corporation with its principal place of business in Kuala Lumpur, Malaysia.

4 2. Plaintiff MSC Venture One Sdn Bhd ("MVI") is a Malaysian corporation with
5 its principal place of business in Kuala Lumpur, Malaysia. MVI is a subsidiary of MSCVC.
6 Collectively MSCVC and MVI will be referred to herein as "MSC" or "plaintiffs."

7 3. Upon information and belief, defendant Esmond Goei ("Goei") is a citizen of
8 the State of Colorado.

9 4. Upon information and belief, defendant Evelyn Goei ("Goei") is a citizen of
10 the State of Colorado and is the wife of Esmond Goei.

11 5. This Court has subject matter jurisdiction of this matter by reason of the
12 complete diversity of citizenship between the parties pursuant to 28 U.S.C. § 1332. The
13 amount in controversy, exclusive of interest, is in excess of Seventy Five Thousand Dollars
14 (\$75,000).

15 6. Venue exists in this District pursuant to 28 U.S.C. §§ 1391(a) because a
16 substantial part of the events giving rise to the claims alleged herein occurred in this District.

FIRST CLAIM FOR RELIEF

FOR BREACH OF FIDUCIARY DUTY AGAINST DEFENDANT GOEI

17
18
19 7. Plaintiffs repeat and reallege Paragraphs "1" through "6" above as if fully set
20 forth herein.

21 8. Defendant Goei was the Chief Executive Officer and a director of
22 Cyphermetrix, Inc. ("Cyphermetrix"), a Delaware corporation with its principal place of
23 business at 13810 SE Eastgate Way, Suite 160, Bellevue, Washington 98005. From on or
24 about August 2003 to August 17, 2006, Goei was Chief Executive Officer of MSCVC and a
25 director of MVI. Goei was terminated as Chief Executive Officer and director of
26 Cyphermetrix at the end of November 2006.

FOURTH AMENDED COMPLAINT- 2

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1 9. While Chief Executive Officer of MSCVC and a director of MVI, Goei
2 caused them to invest approximately Seventeen Million Three Hundred and Sixty Thousand
3 Dollars (\$17,360,000) in Cyphermetrix and/or its subsidiaries.

4 10. By reason of plaintiffs' \$17,360,000 investment in Cyphermetrix and/or
5 its subsidiaries, plaintiffs owned approximately fifty-nine percent (59%) of Cyphermetrix
6 and continue to own over fifty percent.

7 11. Cyphermetrix is a holding company owning subsidiaries directly and
8 indirectly, in the United States, China, Singapore and Malaysia. CypherEdge Technologies,
9 Inc. ("CypherEdge"), a Delaware corporation with the same principal place of business as
10 Cyphermetrix in Bellevue Washington, is the chief operating subsidiary of Cyphermetrix in
11 the United States. CypherEdge is a software company whose products include software that
12 analyzes data for telephone companies. The subsidiaries of Cyphermetrix doing business in
13 China, Malaysia and Singapore provide software, media and advertising services.

14 12. Goei, when Chief Executive Officer of MSCVC and a director of MVI,
15 represented to plaintiffs that he was pursuing this investment in Cyphermetrix to create a
16 Japanese style "keiretsu" in which plaintiffs' portfolio companies would compliment other
17 companies in the group. Goei represented that this coordination of interlocking companies
18 would benefit plaintiffs. He further represented that Cyphermetrix, as holding company for
19 this "keiretsu" venture, should focus its business efforts in the United States and China. This
20 alleged strategy was outlined by Goei in an article dated March 16, 2005. Pursuant to this
21 corporate strategy, Goei induced plaintiffs to cause the corporation now known as
22 Cyphermetrix to acquire ownership of CypherEdge. Prior to this acquisition, MVI had
23 already invested in the corporation now known as CypherEdge.

24 13. Unbeknownst to plaintiffs, Goei had an undisclosed scheme to resign
25 from plaintiffs to become Chief Executive Officer of Cyphermetrix after plaintiffs provided
26 the financing. In addition, Goei had an undisclosed scheme to divert all United States assets

1 of Cyphermetrix to its Asian subsidiaries where he would wrest ownership and control away
 2 from Cyphermetrix and plaintiffs, as the principal owner of Cyphermetrix.

3 14. Goei, in breach of the fiduciary duty that he owed to plaintiffs and in breach
 4 of applicable law, engaged in a de facto liquidation of the United States based assets of
 5 Cyphermetrix, including CypherEdge. Without the requisite board and shareholder approval,
 6 Goei had been causing the assets of CypherEdge, Cyphermetrix's principal United States
 7 subsidiary, to be transferred without fair consideration to Asian subsidiaries and affiliates of
 8 Cyphermetrix.

9 15. Many of the known actions of Goei defy rationality and constitute a willful
 10 waste of corporate assets. Upon information and belief, Goei caused Cyphermetrix and
 11 CypherEdge to engage in a liquidation of assets in the United States, without any attempt to
 12 maximize the value of the assets. This willful destruction of a business is contrary to any
 13 possible reasonable business judgment. Goei acted intentionally with a purpose other than
 14 advancing the best interests of Cyphermetrix and with the intent to violate applicable positive
 15 law.

16 16. This willful destruction of the United States assets of Cyphermetrix and/or
 17 CypherEdge demonstrates that there had been a sustained and systematic failure of the
 18 directors of Cyphermetrix to exercise oversight over the actions of Goei and an utter failure
 19 by the directors to attempt to assure that a reasonable information and reporting system
 20 existed such that the directors knew what actions Goei was taking.

21 17. The wrongful and destructive acts of Goei included the following:

22 A. On or about March 31, 2005, CypherEdge (then known as
 23 NexusEdge, Inc. ("NexusEdge")) acquired Cyphermetrix, Inc., a software company, for
 24 approximately \$2 Million in NexusEdge stock. In September, 2006 the CypherEdge
 25 (NexusEdge) stock was converted to CypherEdge stock as part of Goei's "keiretsu" strategy.
 26 By reason of this acquisition, CypherEdge was able to acquire a contract to implement

1 “CallMine” software developed by CypherEdge into the data base of one of the largest
 2 United States cell phone carriers. This contract required that the underlying data remain
 3 secure within the United States. Upon information and belief, this contract is the largest
 4 contract held by CypherEdge. Notwithstanding these contractual provisions and
 5 notwithstanding applicable privacy laws of the United States, Goei caused the sensitive client
 6 data to be stored in servers located in China and/or Singapore. Goei further caused the source
 7 code for the “CallMine” software to be brought to China and/or Singapore. There is
 8 inadequate security protection for this source code and data offshore. Upon information and
 9 belief, Goei willfully breached the largest contract of CypherEdge and compromised the
 10 security of one of its principal assets as part of a scheme to remove all Cyphermetrix assets
 11 to Asia where he could have complete and unfettered control.

12 B. Goei caused United Sino-Resources Pte Ltd. (“USR Singapore”), a
 13 Singapore company doing business in China, which is an indirect subsidiary of
 14 Cyphermetrix, to overbill CypherEdge in an amount in excess of \$500,000. By this
 15 fraudulent scheme, Goei caused assets of CypherEdge to be transferred to Singapore and/or
 16 China. Goei further terminated the licensing of the “CallMine” software in the United States
 17 (despite it being the basis for the largest contract of CypherEdge) and directed the transfer of
 18 this software to China. Upon information and belief, Goei had been operating a separate
 19 business, owned by him, through the facilities and employees of USR Singapore and had
 20 been using the assets of CypherEdge to finance his own, separate, independent business.

21 C. As part of a scheme to transfer funds to Cosmos Discovery Sdn
 22 Bhd (“Cosmos”), an indirect subsidiary of Cyphermetrix, in 2005 Goei caused each of the
 23 corporate parents of USR Singapore and Infosation Pte Ltd. (“Infosation”), another indirect
 24 subsidiary of Cyphermetrix, to pay Cosmos One Million Dollars (\$1,000,000) for a two year
 25 right of first refusal for business ventures to be entered into by Cosmos. By these means Goei
 26 caused a total of \$2,000,000 to be transferred to Cosmos without the knowledge or consent

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1 of the directors of MSCVC and MV1. When Cosmos actually did proceed to enter into a
2 business venture later in 2005, Goei caused USR Singapore and Infosation to waive the right
3 of first refusal. Upon information and belief, USR Singapore and Infosation never entered
4 into any transaction with Cosmos and the right of first refusal had no value for them. Upon
5 information and belief, these rights of first refusal were a sham and a means to benefit
6 Goei's own personal business interests in China undertaken through, or in conjunction with,
7 Cosmos. By these means Goei sought to evade the charter of MV1 which allowed no more
8 than ten (10%) percent of this fund to be invested in any single portfolio company. Despite
9 this and further pleaded unlawful diversions of funds to Cosmos, Cosmos became insolvent
10 by 2007, and the diverted funds were not recoverable.

11 D. As part of his scheme to divert funds to China, Goei caused
12 CypherEdge, including its predecessor in interest NexusEdge, to loan \$1,750,000 to
13 Cyphermetrix, which in turn loaned the \$1,750,000 to Cosmos. By these means Goei
14 diverted to Cosmos \$1,750,000 that plaintiffs had invested in CypherEdge for development
15 of software products. Again, these loans were part of Goei's means to evade the charter of
16 MV1 which limited the amount that MV1 could invest in Cosmos. Plaintiffs invested an
17 additional \$1,750,000 in CypherEdge to replace the funds misappropriated by Goei. By
18 reason of the unlawful diversion of \$1,750,000 by Goei, plaintiffs were damaged in the
19 amount of \$1,750,000.

20 E. MV1 approved the investment of Three Million Dollars
21 (\$3,000,000) to acquire and invest in a corporation known as IEI Technologies (China) Ltd.,
22 a Chinese corporation ("IEI China"). In anticipation of this investment, MV1 deposited
23 Three Million Dollars in United Sino-Resources Sdn Bhd ("USR Malaysia"). Goei
24 determined not to proceed with the acquisition and investment in IEI China. The proposed
25 acquisition was cancelled in or around August 2005. Goei never informed the directors of
26 MSCVC or MV1 that the IEI China transaction had been cancelled. Instead, Goei, without

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1 the knowledge or consent of the directors of plaintiffs, diverted Two Million (\$2,000,000)
2 Dollars to USR Singapore purportedly for software development. Goei used a portion of
3 these funds to pay himself compensation which he was later forced to re-classify as a loan
4 and repay. USR Singapore never had any material revenues and dissipated all the funds
5 provided to it. USR Singapore was insolvent by the end of 2006 and has no value today.
6 Goei, without the knowledge or consent of the directors of plaintiffs, diverted the other One
7 Million Dollars (\$1,000,000) to Cosmos based on the sham right of first refusal acquired for
8 the so-called benefit of USR Singapore, a worthless right. By reason of this unauthorized
9 diversion of \$3,000,000, Goei damaged plaintiffs in the amount of \$3,000,000. Goei
10 acknowledged that he faced criminal prosecution by reason of this \$3,000,000
11 misappropriation.

12 F. As part of his scheme to divert funds to China, in 2006 Goei
13 caused Infosation to loan Cyphermetrix the amount of One Million Seven Hundred Fifty
14 Thousand Dollars (\$1,750,000) and for Cyphermetrix to, in turn, loan this \$1,750,000 to
15 Cosmos. Said diversion of the \$1,750,000 to Cosmos, funds that MV1 had invested in
16 Infosation, together with the diversion of the \$1,000,000 from Infosation to Cosmos by
17 means of the sham right of first refusal pleaded previously, was done without the knowledge
18 or consent of the directors of MSCVC and MV1. Indeed, the diversion of this aggregate total
19 of \$2,750,000 was done in direct contravention of the business plan for the investment of
20 \$4,000,000 in Infosation (then named Amico Pte Ltd.), which business plan had been
21 approved by the board of directors of MV1 on April 1, 2005. By these means Goei evaded
22 the restrictions on the amount that MV1 could invest in Cosmos. Since Cosmos was
23 insolvent by 2007 and the diverted \$1,750,000 was not recoverable, this diversion damaged
24 plaintiffs in the amount of \$1,750,000.

25 G. As part of his campaign to discontinue all United States operations
26 and transfer assets to China and Singapore, Goei either terminated all CypherEdge

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1 employees in the United States and/or placed them on "forced vacation." These terminations
2 were in violation of contractual rights of the employees and left CypherEdge unable to
3 conduct business in the United States.

4 H. The termination of employment of CypherEdge's employees by
5 Goei made it impossible for CypherEdge to provide customer support for software that it had
6 sold or licensed. For example, Xerox Corporation executed a three year Master Services
7 Agreement for use of Intelligent Services Network software on July 27, 2006. (Intelligent
8 Services Network software had been developed by RazorLynx, LLC, a company acquired by
9 CypherEdge on or about December 31, 2005). The Master Services Agreement included a
10 substantial investment by Xerox for marketing this software to some of its highest profile
11 clients. CypherEdge obtained the benefit of the Master Services Agreement including
12 revenue from the first two sales by Xerox, but could not fulfill its contractual obligations to
13 Xerox to service the software because it has terminated all its employees. Based on Goei's
14 actions, Xerox terminated the Master Services Agreement with CypherEdge on or about
15 October 28, 2006.

16 I. In the second half of 2006, NER Data Products (West), Inc.
17 ("NER") approached CypherEdge with an offer to purchase a license for Intelligent Services
18 Network software in North America for a 2% license fee including a \$1,000,000 minimum
19 payment. This agreement would have been, except for a few particular companies, non-
20 exclusive. Goei broke off these negotiations and thereafter sought to license the same
21 Intelligent Services Network software in North America and Europe for a minimum payment
22 of only \$112,000 as part of a 1% license fee. This subsequent proposed agreement was for
23 full exclusive use of the Intelligent Services Network software for the Americas and Europe,
24 which destroyed the ability to license the software to others.

25 J. Goei refused to allow CypherEdge software to be sold or licensed
26 in the United States, stating that this software will all be transferred to operations in China.

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1 K. Upon information and belief, Goei without authorization took
 2 personal loans from subsidiaries of Cyphermetrix of approximately \$300,000 and sought to
 3 alter the books and records to show that no amounts were owed by him. Upon further
 4 information and belief, Goei caused Cyphermetrix and/or its subsidiaries to accrue salary for
 5 him while he still was Chief Executive Officer of plaintiffs, and to pay him this accrued
 6 "salary" after he became Chief Executive Officer of Cyphermetrix.

7 L. On or about August 18, 2006, Goei obtained a \$191,870 bonus in
 8 Singapore dollars (approximately \$122,000 American dollars) from Infosation. Goei further
 9 received a salary of \$20,000 a month in Singapore dollars (approximately \$12,700 American
 10 dollars) from Infosation from August 18, 2006 through November 2006 (a total of \$68,000 in
 11 Singapore dollars). In total, Goei received \$259,870 in Singapore dollars (approximately
 12 \$165,000 in American dollars) in compensation from Infosation in 2006, yet provided no
 13 services to Infosation. There was no consideration for these payments to Goei. The directors
 14 of Cyphermetrix, to the extent that they ratified these payments, could have done so
 15 consistent with the fiduciary duties that they owed to Cyphermetrix only upon the
 16 understanding that Goei would provide future services in exchange for this compensation,
 17 which services Goei never provided. Moreover, these funds were diverted from Infosation in
 18 contravention of the business plan by which MV1 invested the \$4,000,000 in Infosation.

19 M. Goei, prior to his termination, caused Cyphermetrix and its
 20 subsidiaries to destroy and remove records. In particular, on or around November 30, 2006,
 21 Goei instructed employees to clean out and remove files (including electronically shared
 22 information) and to remove hard drives and computers. Goei willfully attempted to impede
 23 investigation of his wrongdoing and plaintiffs' ability to recover from him.

24 N. Goei devised "poison pills" in portfolio companies, including, on
 25 information and belief, Primary Edge Technologies Sdn Bhd (formerly known as Primary
 26 Setup Sdn Bhd) ("Primary Edge"), USR Singapore (or its parent USR Malaysia), Infosation,

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1 Cyphermetrix and Cypheredge. These poison pills inflicted penalties upon plaintiffs if, inter
2 alia, Goei, for any reason, left their alleged employment. The most egregious example of
3 Goei's poison pills involved Primary Edge. This poison pill inflicted penalties upon MVI if,
4 inter alia, Goei left the employment of MVI or Primary Edge. (Despite the fact that the
5 "poison pill" provision for Primary Edge contains language referring to Goei's purported
6 employment by MVI or Primary Edge, Goei was at all times relevant hereto only an MVI
7 director and was employed only by MSCVC. Accordingly, plaintiffs have contested Lau
8 Boon Hwee's claim to recover on his suit to enforce his alleged poison pill rights. It appears
9 that Alan Tan, MSCVC's general counsel, who was corrupted by Goei, drafted the poison
10 pill provision carelessly. Notwithstanding this defective drafting, Mr. Lau has brought suit to
11 enforce his alleged poison pill rights). To obtain this poison pill, Goei falsely represented to
12 the investment committee of MVI that Lau Boon Hwee, as principal owner of the Company
13 to be acquired by Primary Edge, had demanded (i) a right to obligate MVI to purchase his
14 shares of Primary Edge for S \$1,200,000 if Goei, for any reason, left his purported
15 employment with MVI or Primary Edge (i.e. a right to put his shares to MVI) or (ii) a right to
16 a golden parachute of eighteen months' payment of salary after Mr. Lau's employment at
17 Primary Edge had ended. In fact, it was Goei who conceived of this poison pill and this
18 golden parachute and who instructed Mr. Lau to ask for these provisions be included in the
19 proposed transaction and instructed Alan Tan to include these provisions in the proposed
20 documents. In other words, Goei, as CEO of MSCVC and a director of MVI, arranged to
21 include provisions that were to benefit himself and Mr. Lau and that were intended to be
22 inimical to the interests of Goei's employer, MSCVC and its subsidiary, MVI. Based on
23 Goei's false representations, the investment committee of MVI approved a proposed
24 transaction in which Mr. Lau would be entitled to an S \$1,200,000 poison pill or a golden
25 parachute of 18 months. Subsequently, in return for the promise of payments to him from
26 Primary Edge (i.e. kick-backs), Goei agreed to increase the poison pill to S \$3,000,000 and to

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1 allow Mr. Lau to have an 18 month golden parachute as well. By these unlawful and
2 fraudulent actions, Goei sought to give himself bargaining leverage against MSCVC,
3 creating a penalty if he left his alleged employment by MVI or his alleged employment by
4 Primary Edge.

5 O. Goei was of the opinion that MSCVC did not pay him sufficient
6 compensation. He deemed himself worthy of a higher salary and complained about the
7 failure of MSCVC to pay him sufficient amounts in bonuses and its alleged refusal to allow
8 him carried interests in the portfolio companies. To obtain the compensation that he thought
9 he deserved, Goei devised an unlawful scheme to obtain compensation from portfolio
10 companies. Goei was paid as a full time CEO of MSCVC, and in that position also worked
11 on behalf of portfolio companies in which MSCVC and/or MVI had invested. MSCVC
12 requested that certain portfolio companies reimburse it for Goei's time spent on their behalf.
13 Goei was of the opinion that he, not MSCVC, deserved this additional compensation. For
14 example, when Goei suggested to Mr. Lau to increase the Primary Edge "poison pill," he
15 sought to be paid compensation as a director of Primary Edge. Upon information and belief,
16 Goei caused MVI to invest more funds than Mr. Lau had requested for Primary Edge so that
17 funds would be available to pay Goei this additional illegal compensation. Upon information
18 and belief, any funds Primary Edge had available to pay Goei were derived from the
19 investment of MVI. The amount and the extent of kick-backs that Goei received from
20 Primary Edge or any other portfolio company is unknown to plaintiffs. Upon information
21 and belief, as part of the kick-back scheme with Mr. Lau, Goei caused Mr. Lau to invest in
22 Aspect Technologies, Inc., a corporation in which Goei was a principal owner. Further, as
23 pleaded above, Goei caused certain portfolio companies to pay or to accrue compensation for
24 him. Primary Edge, including its subsidiaries SMSHub Pte Ltd. ("SMSHub") and Affinity
25 Communications Pte Ltd. ("Affinity"), accrued compensation of S \$10,000 a month for Goei.
26 Goei also requested Cypheredge and Infosation to accrue salary for him. Accrued salary

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1 from Infotation of approximately \$122,000 was subsequently paid to Goei as a "signing
2 bonus" when he became the full time Chief Executive Officer of Cyphermetrix. This
3 \$122,000 represented Goei's calculation of the so-called shortfall in compensation that he
4 deemed he deserved while a full time employee of MSCVC.

5 P. Goei, without the knowledge or consent of plaintiffs also used his
6 position as CEO of MSCVC to obtain warrants and options in the portfolio companies for
7 himself and his allies. Goei pursued this scheme because he believed that he was not
8 included in the profit-sharing scheme approved by the MSCVC Board. Goei then sought to
9 "compensate" himself by obtaining equity interests in the portfolio companies without the
10 knowledge and consent of his employer, MSCVC. Goei had three goals:

11 1. To enrich himself with warrants and options that he projected would have a
12 value of in excess of Six Hundred Million Dollars (\$600,000,000.00).

13 2. To dilute control of MSCVC and MVI over the portfolio companies so as to
14 make them minority shareholders, and grant himself effective control over these portfolio
15 companies, in particular Cyphermetrix and its subsidiaries. Goei sought to create a position
16 for himself as a controlling person of the portfolio companies once he left the employment of
17 MSCVC.

18 3. To corrupt other officers and others affiliated with MSCVC by offering them
19 warrants and options. By these means Goei attempted to cause these employees and outside
20 professionals retained by MSCVC to be loyal to him rather than to MSCVC.

21 Q. Goei fashioned himself as Robin Hood, with the goal of stealing
22 from MSCVC for the benefit of himself and those he called his "Merry Men." These "Merry
23 Men" were the other senior employees of MSCVC. Goei explicitly used this Robin Hood
24 analogy when he organized the shadow organization of "MM Capital" (i.e. Merry Men
25 Capital). The goal of MM Capital was, inter alia, to wrest control of the portfolio companies
26 away from MSCVC and MVI and to enrich Goei and those MSCVC employees that he

1 sought to corrupt.

2 R. By reason of Goei's scheme to take control of the portfolio
3 companies, while CEO of MSCVC, Goei took steps to decrease MSCVC's control over these
4 portfolio companies. Goei further did not seek those control provisions that MSCVC, as a
5 venture capitalist, had a right to expect. For example, MSCVC, as the majority shareholder
6 and the provider of virtually all funds to Cyphermetrix had no seat on the board of directors
7 of Cyphermetrix.

8 S. Goei intentionally and purposely hid his schemes from MSCVC.
9 He would provide MSCVC with inaccurate and incomplete minutes of board meetings of
10 portfolio companies to conceal his wrongdoing. Goei instructed his subordinates at MSCVC
11 to keep information from the board of MSCVC.

12 T. Goei's conduct went far beyond mere civil misconduct. If
13 American law governed his conduct while CEO of MSCVC, Goei would be liable under the
14 Racketeer Influenced and Corrupt Organizations Act ("RICO") 18 U.S.C. §§ 1961 et seq.
15 He engaged in a prototypical RICO pattern of racketeering.

16 18. Upon information and belief, it was Goei's scheme to divert all United States
17 assets of Cyphermetrix to China and Singapore where he would gain ownership and control.
18 Upon information and belief, the directors of Cyphermetrix have not been properly advised
19 of, nor have they authorized or approved, this strategy, which was intended to benefit Goei
20 personally and to harm plaintiffs.

21 19. Goei, as Chief Executive Officer of MSCVC and a director of MVI, owed
22 them a fiduciary duty while he served in that capacity. Goei, as both Chief Executive Officer
23 and director of Cyphermetrix owed the fiduciary duty of loyalty, care, good faith and fair
24 dealing to plaintiffs.

25 20. By reason of Goei's above-pleaded willful scheme to destroy the United
26 States operations of CypherEdge and his transfer of assets to China and Singapore, as

1 pleaded above, and by reason of Goei's undisclosed schemes to be compensated by the
 2 portfolio companies and dilute control of MSCVC over the portfolio companies and seize
 3 control himself and by reason of diverting assets without the authorization of plaintiffs, Goei
 4 violated the fiduciary duties of loyalty, care, good faith and fair dealing that he owed as
 5 Chief Executive Officer of MSCVC and that he owed as a director of MVI, and that he owed
 6 as Chief Executive Officer of Cyphermetrix, to plaintiffs.

7 21. Goei, in breach of the fiduciary duties that he owed to plaintiffs, has pursued a
 8 scheme to enrich himself at plaintiffs' expense. Upon information and belief, at plaintiffs'
 9 expense Goei was attempting to create a software media and advertising conglomerate
 10 "keiretsu" in China that would be owned and controlled by him.

11 22. By reason of the foregoing, plaintiffs have been damaged in the amount of
 12 Seventeen Million Three Hundred Sixty Thousand Dollars (\$17,360,000) together with
 13 interest accrued thereupon.

14 **SECOND CLAIM FOR RELIEF**

15 **FOR COMMON LAW FRAUD AGAINST DEFENDANT GOEI**

16 23. Plaintiffs repeat and reallege Paragraphs "1" through "22" above as if fully set
 17 forth herein.

18 24. Goei represented to plaintiffs, as pleaded above, that he was creating a
 19 "keiretsu" through Cyphermetrix for the benefit of plaintiffs. Goei further represented that
 20 the United States would be one of the two markets that he would pursue.

21 25. Contrary to Goei's representations, he was pursuing a scheme by which he
 22 would gain ownership and control of the assets of Cyphermetrix, and have these United
 23 States assets transferred to Asian entities under his ownership and/or control. Goei was
 24 pursuing a scheme to use plaintiffs' funds to finance a conglomerate for his personal benefit.

25 26. Goei made his misrepresentations to plaintiffs with knowledge that they were
 26 false when made.

1 27. Plaintiffs relied upon Goei's misrepresentations and based thereupon, agreed
2 to invest the Seventeen Million Three Hundred Sixty Thousand Dollars (\$17,360,000) in
3 Cyphermetrix.

4 28. By reason of Goei's misrepresentations, plaintiffs have been damaged.

5 **THIRD CLAIM FOR RELIEF**

6 **FOR FRAUDULENT NON-DISCLOSURE AGAINST DEFENDANT GOEI**

7 29. Plaintiffs repeat and reallege Paragraphs "1" through "28" above as if fully set
8 forth herein.

9 30. As a fiduciary of plaintiffs, Goei owed them a duty of full disclosure.

10 31. Goei had and failed to disclose to plaintiffs his scheme to use plaintiffs'
11 investments to fund a conglomerate of companies owned principally by Goei in China. Goei
12 never disclosed his scheme to shut down all United States operations and divert these assets
13 to China and Singapore.

14 32. Had Goei disclosed his scheme to create a Chinese conglomerate owned and
15 controlled principally by him and to eviscerate the operations of Cyphermetrix in the United
16 States to benefit operations in China and Singapore owned and/or controlled by him,
17 plaintiffs would not have invested in Cyphermetrix.

18 33. By reason of the fraudulent non-disclosures of Goei, plaintiffs have been
19 damaged in the amount of Seventeen Million Three Hundred Sixty Thousand Dollars.

20 **FOURTH CLAIM FOR RELIEF**

21 **FOR BREACH OF FIDUCIARY DUTY AGAINST DEFENDANT GOEI**

22 34. Plaintiffs repeat and reallege Paragraphs "1" through "33" above as if fully set
23 forth herein.

24 35. From on or about August 18, 2003 to August 17, 2006, Goei was Chief
25 Executive Officer of MSCVC and a director of MVI. Plaintiffs were, and continue to be,
26 venture capital entities. As Chief Executive Officer of MSCVC and as a director of MVI,

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1 Goei owed plaintiffs a duty of loyalty, care, good faith and fair dealing.

2 36. As venture capitalists, plaintiffs invest millions of dollars in start-up
3 corporations. When plaintiffs invest in a start-up corporation, they insist upon having
4 representation on its board of directors. Upon information and belief, this demand for board
5 representation is a policy common to virtually all venture capitalists. Having a director on the
6 board allows the venture capitalist full access to corporate information and the ability to
7 shape and influence corporate decisions.

8 37. One of the corporations for which plaintiffs provided venture capital financing
9 is Farallon Medical, Inc. ("Farallon"). Plaintiffs invested Two Million Eight Hundred
10 Twenty Nine Thousand and Eighty Eight Dollars (\$2,829,088) in Farallon. On a converted
11 basis, plaintiffs own approximately Twenty Five (25%) percent of Farallon. Upon
12 information and belief, plaintiffs (with their interests aggregated) constitute the largest
13 shareholder of Farallon.

14 38. Pursuant to a Voting Agreement dated June 7, 2005 by and among, inter alia,
15 plaintiffs and Farallon, plaintiffs were entitled to elect at least one director of Farallon's
16 board of directors (and depending upon other conditions they could be entitled to elect two
17 directors).

18 39. The Amended and Restated Voting Agreement dated June 2, 2006, executed
19 by all parties to this lawsuit, purported to supersede and replace the original Voting
20 Agreement. In relevant part the Amended and Restated Voting Agreement provides:

21 2. Election of Boards of Directors.

22 (a) Vote. During the term of this Agreement, each Voting
23 Party agrees to vote all Shares in such manner as may
24 be necessary to elect (and maintain in office) as
25 members of the Company's Board of Directors the
26 following individuals:

(i) One (1) Preferred Designee (as defined below)

as a Preferred Director;

(ii) One (1) Common Designee (as defined below) as the Common Director; and

(iii) Two (2) Mutual Designees (as defined below) as the Mutual Directors.

(b) Designation of Directors. The designees to the Company's Board of Directors described above (each a "Designee") shall be designated as follows:

(i) The "Preferred Designee" shall be the Chairman of the Board of Directors and shall be designated by MSC Ventures.

(ii) The "Common Designee" shall be the Company's President and Chief Executive Officer.

(iii) The "Mutual Designees" shall be designated by the Preferred Designee and the Common Designee.

(c) Current Designees. For the purpose of this Agreement, the current directors of the Company shall be deemed to be the following Designees: (i) Esmond Goei shall be the Preferred Designee; (ii) James T. McKinley shall be the Common Designee, and (iii) Richard Char shall be a Mutual Designee.

(d) Changes in Designees. From time to time during the term of this Agreement, Voting Parties who hold sufficient Shares to select a Designee pursuant to this Agreement (in the event that Voting Parties have the right to designate a Designee) or individuals who have a right to designate a Designee may, in their sole discretion:

(i) notify the Company in writing of an intention to remove from the Company's Board of Directors any incumbent Designee who occupies a Board seat for which such Voting Parties are entitled to designate the Designee or for which such individual is entitled to designate the Designee, as the case may be; or

(ii) notify the Company in writing of an intention to

1 select a new Designee for election to a Board
 2 seat for which such Voting Parties are entitled
 3 to designate the Designee or for which such
 4 individual is entitled to designate the Designee
 (whether to replace a prior Designee or to fill a
 vacancy in such Board seat), as the case may be;

5 In the event of such an initiation of a removal or
 6 selection of a Designee under this section, the Company shall
 7 take such reasonable actions as are necessary to facilitate such
 8 removals or elections, including, without limitation, soliciting
 9 the votes of the appropriate stockholders, and the Voting
 10 Parties shall vote their Shares to cause: (a) the removal from
 the Company's Board of Directors of the Designee or
 Designees so designated for removal; and (b) the election to
 the Company's Board of Directors of any new Designee or
 Designees so designated.

11 Notwithstanding the above, MSC Ventures may not
 12 remove Esmond Goei as the Preferred Designee without
 13 Esmond Goei's consent.

14 (emphasis added).

15 40. Defendant Goei purported to execute the Amended and Restated Voting
 16 Agreement on behalf of plaintiffs.

17 41. Goei did not inform plaintiffs of the restriction, added for the first time in the
 18 Amended and Restated Voting Agreement, that plaintiffs could not remove him as the
 19 Preferred Designee without his consent. Plaintiffs learned of this provision only after the
 20 Amended and Restated Voting Agreement had been executed. Goei executed the Amended
 21 and Restated Voting Agreement containing this provision giving Goei veto power over his
 22 removal without the knowledge and consent of the directors of plaintiffs. Goei had no
 23 authority to execute the Amended and Restated Voting Agreement containing this limitation
 24 on his removal.

25 42. By executing the Amended and Restated Voting Agreement providing that he
 26 could not be removed as the Preferred Designee without his consent, Goei violated the

1 fiduciary duties of loyalty, care, good faith and fair dealing that he owed to plaintiffs. Goei
2 unlawfully misused his position as Chief Executive Officer of MSCVC and as a director of
3 MVI to further his own personal interests at the expense of plaintiffs' interests.

4 43. Goei had a three year employment agreement to serve as Chief Executive
5 Officer of MSCVC which terminated on August 17, 2006. Upon information and belief,
6 when Goei purported to execute the Amended and Restated Voting Agreement on or about
7 June 6, 2006, he knew that a little over two months later he would no longer have a position
8 with plaintiffs. Goei submitted a resignation letter on August 18, 2006, a day after his
9 employment agreement had expired. Upon information and belief, Goei intentionally
10 negotiated for and obtained his alleged right to remain as Preferred Designee for so long as
11 he chose as an illicit means to provide him with leverage in negotiating with plaintiffs.

12 44. By reason of Goei's actions, plaintiffs had no board representation on
13 Farallon's board between August 17, 2006 and February 6, 2007. They did not have insider
14 access to information nor could they participate in the development and implementation of
15 corporate policy and decision making. During this period, Farallon agreed to pay
16 compensation and stock options to Goei and one of his associates which plaintiffs would
17 have opposed. The stock options granted to Goei and his associate were at a below market
18 stock price, which, upon information and belief, was contrary to Farallon's stock option plan.
19 Goei, while serving as a fiduciary of plaintiffs, intentionally thwarted and interfered with
20 corporate policies of plaintiffs, and sought to further his own personal financial interests.

21 45. Goei had taken no action to expressly and unequivocally resign as the
22 Chairman of the Board of Farallon. By reason of Goei having been the Preferred Designee,
23 he remained as the Chairman of the Board of Farallon.

24 46. On or about February 6, 2007 Farallon agreed to provide a seat upon its board
25 of directors to MSCVC but not as Chairman of the Board, to which position MSCVC was
26 entitled to appoint its representative.

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1 47. By reason of having no board representation from August 17, 2006 to
2 February 6, 2007 the value of plaintiffs' investment in Farallon was damaged.

3 48. By reason of Goei serving as Chairman of the Board of Farallon instead of a
4 designee of MSCVC, the value of plaintiffs' investment in Farallon has been damaged.

5 49. By reason of Goei's breach of fiduciary duty as pleaded above, plaintiffs have
6 been damaged in an amount to be determined, but not less than One Million (\$1,000,000)
7 Dollars.

8 **FIFTH CLAIM FOR RELIEF**

9 **FOR BREACH OF CONTRACT AND**

10 **BREACH OF FIDUCIARY DUTY AGAINST BOTH DEFENDANTS**

11 50. Plaintiffs repeat and reallege Paragraphs "1" through "49" above as if fully set
12 forth herein.

13 51. On August 18, 2003, Goei entered into a written employment agreement with
14 MSCVC (the "Employment Agreement").

15 52. The Employment Agreement provided in relevant part that:

16 "The Employee [i.e. Goei] is also prohibited from
17 acquiring any shares or interests in any of the
18 company's clients without the prior approval in writing
19 from the Chief Executive Officer of the Multimedia
20 Development Corporation."

21 53. Secretly and unbeknownst to plaintiffs, on or about November 11, 2004, the
22 board of directors of Farallon authorized the issuance of 393,333 warrants to Goei
23 individually. Upon information and belief, the warrants were issued on December 21, 2004,
24 had an exercise price of five (\$.05) cents a share and expire on December 20, 2014.

25 54. Goei never received any written permission from plaintiffs' directors and/or
26 from the Chief Executive Officer of the Multimedia Development Corporation to acquire

1 these warrants from Farallon.

2 55. At the time that Goei obtained these warrants, he was working full time for
3 MSCVC and its subsidiaries and affiliates, and had no right to additional compensation from
4 an entity in which plaintiffs invested.

5 56. The 393,333 warrants were earned by Goei by reason of his duties as an
6 officer of plaintiffs, and should have been issued in the name of, and delivered to, plaintiffs.

7 57. Upon information and belief, Goei never advised or informed Farallon that he
8 could not lawfully accept the 393,333 warrants.

9 58. Upon information and belief, Farallon offered to provide the warrants, and did
10 provide the warrants, to Goei to influence his actions as the Chief Executive Officer of
11 MSCVC and as a director of MVI.

12 59. On or about June 3, 2006, Goei caused the 393,333 warrants to be transferred
13 to his wife Evelyn Goei.

14 60. Upon information and belief, Goei transferred the 393,333 warrants to his
15 wife in an attempt to defeat the claims of plaintiffs.

16 61. Upon information and belief, Evelyn Goei conspired with her husband Goei to
17 secrete the 393,333 warrants unlawfully obtained by Goei so as to defeat the claims of
18 plaintiffs.

19 62. Goei breached his Employment Agreement and the fiduciary duty he owed to
20 plaintiffs by secretly obtaining the 393,333 warrants for himself. By accepting these warrants
21 from Goei, Evelyn Goei is liable, jointly and severally with him, for his breach of the
22 Employment Agreement and his breach of fiduciary duty. All such compensation unlawfully
23 paid to Goei and transferred to Evelyn Goei is the property of plaintiffs.

24 63. Upon information and belief, the warrants had a value of in excess of One
25 Million (\$1,000,000) Dollars.

26 64. By reason of the foregoing, plaintiffs have been damaged by defendants in an

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1 amount to be determined, but in excess of One Million (\$1,000,000) Dollars.

2 **SIXTH CLAIM FOR RELIEF**

3 **FOR CONVERSION AGAINST BOTH DEFENDANTS**

4 65. Plaintiffs repeat and reallege Paragraphs "1" through "64" above as if fully set
5 forth herein.

6 66. The 393,333 warrants were unlawfully issued in the name of Goei, were
7 unlawfully transferred to Evelyn Goei and are the rightful property of plaintiffs.

8 67. Goei unlawfully converted the 393,333 warrants, which are equitably owned
9 by plaintiffs, into property owned of record by himself, and thereafter transferred record
10 ownership of this property of plaintiffs to his wife, Evelyn Goei.

11 68. By reason of this conversion of plaintiffs' warrants by defendants, plaintiffs
12 are entitled to an order of this Court compelling and ordering defendants to cause the
13 393,333 warrants issued in Goei's name and transferred by him to Evelyn Goei to be
14 transferred to plaintiffs.

15 **SEVENTH CLAIM FOR RELIEF**

16 **FOR AN ACCOUNTING AGAINST BOTH DEFENDANTS**

17 69. Plaintiffs repeat and reallege Paragraphs "1" through "68" above as if fully set
18 forth herein.

19 70. Plaintiffs, as venture capitalists, have invested in other entities besides
20 Cyphermetrix and CypherEdge, and their subsidiaries and affiliates.

21 71. One of the other entities in which plaintiffs invested was NexusEdge
22 Technologies Sdn Bhd ("NexusEdge Malaysia").

23 72. On April 19, 2005, NexusEdge Malaysia accused Goei of demanding that it
24 set aside shares of NexusEdge Malaysia for himself and other employees of MSCVC.

25 NexusEdge Malaysia accused Goei of stating that the compensation that he and the
26 employees received from MSCVC was not sufficient, and that they were entitled to be

1 rewarded fairly.

2 73. Goei's demand for stock from NexusEdge Malaysia is consistent with his
3 receipt of the warrants from Farallon.

4 74. Upon information and belief, while serving as Chief Executive Officer of
5 MSCVC and as a director of MVI, Goei may have engaged in a pattern and practice of
6 demanding stock options, warrants and other compensation for himself and other employees
7 of plaintiffs from entities in which plaintiffs planned to invest or had invested, in
8 contravention of his employment agreement and the fiduciary duty that he owed to plaintiffs.

9 75. Plaintiffs do not know the amount or extent of stock, options, warrants and
10 other compensation that Goei obtained for himself and other employees of plaintiffs from
11 entities in which plaintiffs planned to invest or had invested, and the extent to which he
12 assigned or transferred such unlawfully obtained assets to his wife, Evelyn Goei.

13 76. By reason of the foregoing, plaintiffs are entitled to an accounting from Goei
14 and Evelyn Goei of all stock, warrants, options and other compensation that Goei received on
15 behalf of himself (including that held in the name of his wife and other family members) and
16 other employees of plaintiffs from companies in which plaintiffs planned to invest or had
17 invested and which Goei received while, or by reason of, his serving as Chief Executive
18 Officer of MSCVC and a director of MVI. Based upon the results of this accounting, any
19 such stock, warrants, options and other compensation should be transferred to plaintiffs by
20 defendants and/or Goei should be liable in damages for all such assets obtained by him for
21 himself and other employees of plaintiffs and/or Evelyn Goei should be liable in damages for
22 all such assets obtained by her, jointly and severally with Goei.

EIGHTH CLAIM FOR RELIEF AGAINST
DEFENDANT GOEI FOR DECLARATORY RELIEF

77. Plaintiffs repeat and reallege Paragraphs “1” through “76” above as if fully set forth herein.

78. It was Goei that recommended to the board of MVI that it invest in Affinity Communications Pte Ltd. (“Affinity”), an entity controlled by Lau Boon Hwee and in which Mr. Lau had been the majority owner. Goei had been acquainted with Mr. Lau before Goei had become CEO of MSCVC. MVI used the special purpose vehicle of Primary Edge to acquire Affinity.

79. As pleaded above, Goei caused Mr. Lau to request a “poison pill” giving Mr. Lau a right to put his shares in Primary Edge to MVI for S \$1,200,000. Upon information and belief, Goei also caused Mr. Lau to request a golden parachute of 18 months’ compensation. These poison pill and golden parachute rights of Mr. Lau would be triggered, inter alia, by Goei leaving the employment of MVI or Primary Edge for any reason (although in fact, Goei was never employed by MVI or by Primary Edge). Goei sought these provisions to give himself bargaining leverage vis a vis MSCVC and making it expensive for MSCVC (as parent of MVI) to discharge him. By instructing Mr. Lau to make these demands (and then pretending to accede to them), Goei was baldly violating the fiduciary duties that he owed to plaintiffs.

80. Goei fraudulently represented to the investment committee of MVI that Mr. Lau had demanded the S \$1.2 million poison pill and the 18 month golden parachute. Goei fraudulently omitted to disclose to the investment committee of MVI that Mr. Lau had not originally demanded this poison pill or golden parachute, that he would have accepted MVI’s investment in Primary Edge without these conditions and that these terms had been inserted at Goei’s request for Goei’s personal benefit. Based on these fraudulent representations and omissions, the investment committee of MVI approved the investment in Primary Edge

1 which included the S \$1.2 million poison pill or the golden parachute.

2 81. As further pleaded above, upon information and belief Goei thereafter
3 obtained the agreement from Mr. Lau for Primary Edge, including its subsidiaries to pay
4 kick-backs to Goei and/or accrue kick-backs for him. Upon information and belief, Goei
5 caused plaintiffs to invest more funds in Primary Edge than Lau Boon Hwee had requested
6 so that funds would be available to compensate Goei. In return for this promise of kick-
7 backs, Goei suggested that Mr. Lau have Primary Edge increase the amount of the poison pill
8 and he allowed Mr. Lau to choose the amount of the increased poison pill. Mr. Lau chose to
9 increase the poison pill to S \$3,000,000. On behalf of MVI Goei purported to agree to this
10 increase, without the knowledge or consent of the board of directors of MVI. Goei further
11 agreed to Mr. Lau obtaining both the poison pill and the golden parachute without the
12 knowledge or consent of the board of directors or investment committee of MVI. This
13 conduct of Goei further egregiously breached the fiduciary duties that he owed to MSCVC
14 and MVI.

15 82. In or around May through July 2006, Goei claimed that he had been
16 constructively discharged from MSCVC. Goei informed Mr. Lau of this alleged constructive
17 discharge and purported to resign as Chief Executive Officer of Primary Edge so as to cause
18 Mr. Lau to invoke his poison pill and golden parachute rights. Goei, together with Alan Tan,
19 general counsel of MSCVC, orchestrated a phony negotiation with Mr. Lau. Alan Tan, who
20 had been corrupted by Goei--Goei had caused hundreds of thousands of warrants and options
21 of Cyphermetrix to be issued to Alan Tan--drafted the negotiations between Mr. Lau and
22 himself. In other words, Alan Tan drafted both MVI's offers and Mr. Lau's counter-offers to
23 arrive at a pre-set "compromise" in which MVI would loan an additional \$500,000 to
24 Primary Edge and Mr. Lau would be allowed to convert million of dollars of his so-called
25 poison pill rights into equity in Primary Edge, thereby diluting MVI's control. These phony
26 negotiations were undertaken at the direction of Goei. Plaintiffs refused to accede to this so-

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1 called compromise.

2 83. Primary Edge and its affiliated companies are out of business and are
3 valueless. Mr. Lau has initiated a suit in the High Court of Malaya at Kuala Lumpur,
4 Malaysia against MVI, vide Civil Suit No: D2-22-1207-2006, to recover his alleged poison
5 pill rights.

6 84. Any and all liability of plaintiffs to Lau Boon Hwee was the direct and
7 proximate result of Goei's blatant and egregious breaches of the fiduciary duties that he
8 owed to MSCVC and MVI. Goei is not only legally responsible to indemnify and hold
9 plaintiffs harmless from any and all liability that they may incur to Lau Boon Hwee, he is
10 legally responsible to indemnify and hold them harmless from any and all costs of defense,
11 including all attorney's fees incurred.

12 85. The ultimate amount of Goei's liability to plaintiffs cannot be calculated until
13 there is a final adjudication of Mr. Lau's suit against MVI.

14 86. Upon information and belief, it is Goei's position that he is not liable to
15 indemnify and hold plaintiffs harmless from all liability, and defense, costs, including
16 attorney's fees, incurred by plaintiffs in the suit brought against MVI by Lau Boon Hwee.

17 87. By reason of the foregoing, there is a live and justiciable controversy,
18 between plaintiffs and Goei, whether Goei is liable to indemnify and hold plaintiff harmless
19 from any and all liability and defense costs including attorney's fees incurred by plaintiffs by
20 reason of the suit brought against plaintiffs by Lau Boon Hwee.

21 88. Plaintiffs respectfully request that this Court issue a declaratory judgment,
22 adjudging, and declaring that Goei is liable to indemnify and hold plaintiffs harmless from
23 any and all liability and defense costs, including attorney's fees, incurred by plaintiffs by
24 reason of the suit brought against MVI by Lau Boon Hwee.

NINTH CLAIM FOR

RELIEF AGAINST DEFENDANT GOEI

89. Plaintiffs repeat and reallege Paragraphs "1" through "88" above as if fully set forth herein.

90. When Goei recommended to the Investment Committee of MV1 that MV1 invest \$2,000,000 in the Primary Edge/Affinity companies he (a) misrepresented the value of Affinity by representing that Lau Boon Hwee was paying S \$600,000 for his co-shareholder's 40% interest in Affinity when he was actually paying S \$200,000, thereby overvaluing Affinity by 50%. Without the knowledge of the Investment Committee of MV1, Goei recommended and allowed MV1 to pay Mr. Lau S \$600,000 for this 40% interest, thereby providing him with a S \$200,000 profit; (b) misrepresented that Lau Boon Hwee had demanded a poison pill and golden parachute when Goei had suggested these provisions to Mr. Lau; (c) failed to disclose that Affinity's revenues had fallen by approximately ninety (90%) percent; (d) failed to disclose that Affinity was in a highly competitive field and had no proprietary software or any other product to distinguish it from numerous competitors; (e) misrepresented that Affinity was a "China-play" when Affinity's key subsidiary SMSHub had no license to do business in China and virtually all the revenues of Affinity (including its subsidiaries) was derived from Singapore; (f) failed to disclose that Goei had ordered his employees to do little, if any, due diligence; (g) failed to disclose that Affinity had defaulted upon a contract with Keppel Communications Pte Ltd. ("Keppel") to buy back Keppel's shares and that Keppel had sued, or was on the verge of suing, by reason of this breach. By reason of this obligation, Affinity was insolvent when MV1 invested in it,

1 which Goei failed to disclose to MV1's board of directors and investment committee; (h)
2 Goei failed to disclose that SMSHub had a deficient product. SMSHub was in the business
3 of placing inexpensive telephone calls but there was a tremendous dropped call problem in
4 which approximately half the calls terminated prematurely in the middle of a conversation;
5 (i) Goei failed to disclose that he was allowing his friend Lau Boon Hwee to obtain a salary
6 more than double what he had previously been paid; and, (j) Goei failed to disclose that by
7 reason of all the economic benefits that he provided for no legitimate reason to Lau Boon
8 Hwee, Mr. Lau agreed that SMSHub should accrue S \$5,000 a month for the benefit of Goei
9 (and Affinity would also accrue S \$5,000 a month for Goei's benefit).

11 91. Goei did not obtain proper approval for the investment of the \$2,000,000 in
12 Primary Edge/Affinity because (i) of the above pleaded fraudulent misrepresentations and
13 omissions; (ii) of Goei's scheme not to inform Jagdish Dhaliwal, a member of the MV1
14 Investment Committee about the investment so that Mr. Dhaliwal could not influence the
15 other members of the Investment Committee to vote against this investment. In the absence
16 of a meeting by the Investment Committee, approval by four of the five members of the
17 Investment Committee, when Goei intentionally refused to inform a hostile member of the
18 proposed investment, was not a legitimate approval; and, (iii) even after the Investment
19 Committee "approval," Goei proposed and thereafter agreed to increase the poison pill from
20 S \$1,200,000 to S \$3,000,000 and to provide Mr. Lau with both a poison pill and a golden
21 parachute, rather than one or the other, without the knowledge or consent of the Investment
22 Committee of MV1. Consequently, Goei agreed to materially worse investment terms
23 without the requisite authorization.
24
25
26

92. Goei had no good faith basis to seek the investment in Primary Edge/Affinity. His principal motivation for the investment in his friend's company is that he expected to be fired from MV1 or/and MSCVC or that his contract would not be renewed by plaintiffs. The real purpose for this investment was to provide Goei with a poison pill to assist his negotiations against plaintiffs when he would be terminated and to provide him with a secret compensation of S \$10,000 a month. In breach of the fiduciary duty that he owed to plaintiffs, Goei deceived, misled, and defrauded MV1 into making the \$2,000,000 investment in Primary Edge/Affinity. Further, in breach of the fiduciary duty that he owed to plaintiffs, Goei failed to undertake and indeed prevented, the ordinary due diligence and full disclosure to the Investment Committee of the actual facts of the investment.

93. The entire investment in Primary Edge/Affinity was lost, and all the Primary Edge/Affinity entities are insolvent.

94. By reason of the aforepleaded misconduct of Goei, plaintiffs have been damaged in the sum of Two Million (\$2,000,000) Dollars for which Goei is personally liable.

TENTH CLAIM FOR

RELIEF AGAINST DEFENDANT GOEI

95. Plaintiffs repeat and reallege Paragraphs "1" through "94" above as if fully set forth herein.

96. Plaintiffs invested One Million, Seven Hundred Fifty Thousand (\$1,750,000) Dollars in CypherEdge (including its predecessor, NexusEdge) for development of software products by CypherEdge.

97. Without knowledge or consent of plaintiffs, in 2006, Goei caused CypherEdge

1 (including its predecessor NexusEdge) to loan \$1,750,000 to Cosmos.

2 98. Cosmos became insolvent by 2007 and has no ability to repay the \$1,750,000.

3 99. To pursue their investment in CypherEdge, plaintiffs were obligated to invest
4 an additional \$1,750,000 in CypherEdge to replace the funds diverted by Goei.

5 100. By reason of Goei's diversion of the \$1,750,000, in breach of the fiduciary
6 duty he owed plaintiffs, plaintiffs have been damaged in the sum of \$1,750,000.
7

8 **ELEVENTH CLAIM FOR**
9 **RELIEF AGAINST DEFENDANT GOEI**

10 101. Plaintiffs repeat and reallege Paragraphs "1" through "100" above as if fully
11 set forth herein.

12 102. The Investment Committee of MV1 approved the investment of Three Million
13 Dollars (\$3,000,000) in IEI China. In connection therewith, MV1 deposited \$3,000,000 with
14 USR Malaysia.
15

16 103. Goei determined not to proceed with the investment in IEI China. Without
17 knowledge or permission of the directors or Investment Committee of MV1, Goei
18 misappropriated the \$3,000,000 by providing \$2,000,000 to USR Singapore and using the
19 other \$1,000,000 to have USR Malaysia purchase a bogus right of first refusal from Cosmos
20 for the purported benefit of USR Singapore.
21

22 104. USR Singapore has been insolvent since 2006 and none of the funds are
23 recoverable from it. Cosmos too became insolvent by 2007 and the \$1,000,000 is not
24 recoverable from it.

25 105. This misappropriation by Goei was in breach of the fiduciary duty he owed
26

1 plaintiffs.

2 106. By reason of Goei's misappropriation of the funds explicitly designated for
3 investment in IEI China, plaintiffs have been damaged on the amount of Three Million
4 (\$3,000,000) Dollars.

5
6 **TWELFTH CLAIM FOR**
7 **RELIEF AGAINST DEFENDANT GOEI**

8 107. Plaintiffs repeat and reallege Paragraphs "1" through "106" above as if fully
9 set forth herein.

10 108. MV1 invested \$4,000,000 for the benefit of Infosation to pursue a business
11 plan approved by its Investment Committee.

12 109. Of the funds MV1 invested in Infosation, Goei diverted \$2,750,000 to
13 Cosmos. Goei caused \$1,750,000 of Infosation funds to be loaned to Cosmos and used
14 \$1,000,000 held for the benefit of Infosation by its corporate parent, to buy a bogus right of
15 first refusal from Cosmos.

16 110. This diversion of \$2,750,000 of plaintiffs' funds designated for the
17 implementation of the business plan of Infosation was done without the knowledge or
18 consent of plaintiffs.

19 111. By reason of this diversion of funds, Goei breached the fiduciary duty that he
20 owed to plaintiffs.

21 112. Cosmos was insolvent by 2007 and has no ability to repay the
22 misappropriated \$2,750,000 to plaintiffs.

23 113. By reason of Goei's breach of fiduciary duty, plaintiffs have been damaged in
24
25
26

1 the amount of Two Million Seven Hundred Fifty Thousand (\$2,750,000) Dollars.

2
3 **PRAYER FOR RELIEF**

4 WHEREFORE, plaintiffs MSC Venture Corporation Sdn Bhd and MSC Venture One
5 Sdn Bhd demand judgment against the defendants as follows:

6 i. Upon the First, Second and Third Claims for Relief against defendant
7 Esmond Goei damages of Seventeen Million Three Hundred Sixty Thousand Dollars
8 (\$17,360,000), together with interest accrued thereupon;

9 ii. On the Fourth Claim For Relief, that plaintiffs recover damages
10 against defendant Esmond Goei in the amount of One Million (\$1,000,000) Dollars;

11 iii. On the Fifth Claim for Relief, that plaintiffs recover damages against
12 defendants Esmond Goei and Evelyn Goei, jointly and severally, in the amount of One
13 Million (\$1,000,000) Dollars;

14 iv. On the Sixth Claim for Relief, that this Court order and compel
15 defendants Esmond Goei and Evelyn Goei to cause the 393,333 warrants issued in Goei's
16 name and transferred to Evelyn Goei to be transferred to plaintiffs;

17 v. On the Seventh Claim for Relief, that this Court order an accounting
18 from Goei and Evelyn Goei of all stock warrants, options and other compensation that Goei
19 received on behalf of himself (including that held in the name of his wife and other family
20 members) and other employees of plaintiffs from companies in which plaintiffs planned to
21 invest or had invested, and which Goei acquired while, or by reason of, his serving as Chief
22 Executive Officer of MSCVC and a director of MVI and based upon the results of this
23 accounting, any such stock, warrants, options and other compensation should be transferred
24 to plaintiffs by defendants and/or Goei should be liable in damages for all such assets
25 obtained by him for himself and other employees of plaintiffs and/or Evelyn Goei should be
26 liable in damages for all such assets obtained by her, jointly and severally with Goei;

vi. On the Eighth Claim for Relief, that this Court issue a declaratory judgment, adjudging, and declaring that Goei is liable to indemnify and hold plaintiffs harmless from any and all liability and defense costs, including attorney's fees, incurred by plaintiffs by reason of the suit brought against MVI by Lau Boon Hwee;

vii. On the Ninth Claim for Relief, that plaintiffs recover damages against defendant Esmond Goei in the amount of Two Million (\$2,000,000) Dollars;

viii. On the Tenth Claim for Relief that plaintiffs recover damages against defendant Esmond Goei in the amount of One Million Seven Hundred Fifty Thousand (\$1,750,000) Dollars;

ix. On the Eleventh Claim for Relief that plaintiffs recover damages against defendant Esmond Goei in the amount of Three Million (\$3,000,000) Dollars;

x. On the Twelfth Claim for Relief that plaintiffs recover damages against defendant Esmond Goei in the amount of Two Million Seven Hundred Fifty Thousand (\$2,750,000) Dollars;

xi. The costs and expenses of this action, including reasonable attorneys' fees; and,

Such other and further relief as this Court deems necessary and just in the circumstances.

Dated this 18th day of February, 2009.

SCHWABE, WILLIAMSON & WYATT, P.C.

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FOURTH AMENDED COMPLAINT- 33

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*Bhd and Third-Party Defendants
CYPHERMETRIX, INC., and
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FOURTH AMENDED COMPLAINT- 34

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of February 2009, I caused to be served the foregoing *Fourth Amended Complaint* on the following parties at the following addresses:

John H. Chun Denise L. Ashbaugh Summit Law Group 315 Fifth Avenue South, Suite 1000 Seattle WA 98104 Telephone: (206) 676-7000 Facsimile: (206) 676-7001 E-mail: johnc@summitlaw.com E-mail: denisea@summitlaw.com	Benjamin J. Stone Cozen O'Connor Washington Mutual Tower 1201 Third Ave Ste 5200 Seattle WA 98101-3071 Telephone: (206) 340-1000 Facsimile: (206) 621-8783 E-mail: BStone@cozen.com
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U.S. Postal Service, ordinary first class mail
U.S. Postal Service, certified or registered mail,
return receipt requested
hand delivery
facsimile
electronic service through the Court's CM/ECF electronic system
other (specify) _____

s/ Stephanie P. Berntsen
Stephanie P. Berntsen

CERTIFICATE OF SERVICE - 1

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